



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

49 CFR Part 395

Hours of Service of Drivers; Electronic Logging Devices; Limited 90-Day Waiver for Old Dominion and Other Motor Carriers Experiencing Problems Integrating PeopleNet ELD System Updates Into Their Fleet Management Systems

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT

ACTION: Grant of waiver.

SUMMARY: FMCSA grants a limited 90-day waiver from the Federal hours-of-service (HOS) regulations pertaining to electronic logging devices (ELDs) for Old Dominion Freight Lines, Inc. (Old Dominion) and other motor carriers in similar situations due to issues concerning the integration of PeopleNet's ELD software into fleet management systems. The Agency has initiated this action in response to a waiver request from Old Dominion.

DATES: This waiver is effective December 18, 2017, and expires on March 18, 2018.

FOR FURTHER INFORMATION CONTACT: Thomas L. Yager, Chief, Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave. SE, Washington, DC 20590. E-mail: MCPSD@dot.gov. Phone : (614) 942-6477.

SUPPLEMENTARY INFORMATION: Old Dominion has asked for relief from the grandfather provision of the ELD regulations, allowing them to add vehicles to their fleet using software that is not fully compliant with the ELD rule, provided the conditions specified in the waiver are met. FMCSA has determined that granting this waiver to Old Dominion, as well as other similarly situated carriers, is in the public interest and will likely achieve a level of safety that is equivalent to the level that would be achieved absent the waiver, based on the terms and conditions imposed in this document.

Legal Basis

The Transportation Equity Act for the 21st Century (TEA-21) (Public Law 105-178, 112 Stat. 107, June 9, 1998) provides the Secretary of Transportation (the Secretary) the authority to grant waivers from any of the Federal Motor Carrier Safety Regulations issued under Chapter 313 of Title 49 of the United States Code or 49 U.S.C. 31136, to a person(s) seeking regulatory relief. (49 U.S.C. 31136(e), 31315(a)). The Secretary must make a determination that the waiver is in the public interest and that it is likely to achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained in the absence of the waiver. Individual waivers may be granted only for a specific unique, non-emergency event, for a period up to three months. TEA-21 authorizes the Secretary to grant waivers without requesting public comment, and without providing public notice.

The Administrator of FMCSA has been delegated authority under 49 CFR 1.87(e) to carry out the functions vested in the Secretary by 49 U.S.C. chapter 311, subchapter I and III, relating to commercial motor vehicle programs and safety regulations.

Background

Old Dominion began equipping its commercial motor vehicles with PeopleNet AOBDRDs in 2010, and by 2011 its entire fleet was equipped with devices which meet the requirements of 49 CFR 395.15. Data from the AOBDRDs is transferred directly into the company's fleet management and safety systems, enabling its dispatchers to know precisely where every driver is at any given time and how many hours he/she has available under the Federal hours-of-service rules. This functionality is not required by the AOBDRD rules under 49 CFR 395.15 or the ELD requirements under Subpart B of 49 CFR part 395.

Old Dominion explained that PeopleNet's AOBRD and ELD hardware currently installed in its vehicles, and the systems that will be installed in the near future, will satisfy the ELD mandate after the company implements the transition to PeopleNet's December 15, 2017, software release. However, the new PeopleNet release does not include the necessary means to integrate into Old Dominion's fleet management and safety software.

Currently, the PeopleNet AOBRD software allows carriers to configure certain sessions. If the settings were not adjustable, the PeopleNet AOBRD would be similar to, but not identical to the FMCSA's ELD technical specifications. Although Old Dominion has configured its settings in the PeopleNet AOBRDs it uses, certain AOBRD software changes must be made by PeopleNet, including:

- Eliminating the "skip" feature;
- Limiting the auto-duty driving status change threshold to 5 miles; and
- Limiting geo-fencing of yards to a 0.5-mile radius.

When these changes are fully implemented, and the operational controls are in place, the PeopleNet system used by Old Dominion will provide an equivalent level of safety while the integration of the ELD software is completed.

Old Dominion's Request

Old Dominion requested a 90-day waiver to permit the company to install and use ELD hours-of-service recording devices (i.e., hardware) running PeopleNet's automatic on-board recording device (AOBRD) software that meets the requirements of 49 CFR 395.15, rather than ELD software that meets the requirements of subpart B to part 395, for any truck added to its fleet on or after December 18, 2017, until the company's fleet management software can be fully integrated with PeopleNet's ELD software. The integration of the

hours-of-service data with the fleet management and safety systems will enable the company to achieve a high level of safety oversight of its drivers.

FMCSA Determination

Based on the information presented in Old Dominion's request, FMCSA believes it is appropriate to grant a limited 90-day waiver from 49 CFR 395.8(a)(1)(i) and Subpart B of 49 CFR Part 395, Electronic Logging Devices. The Agency has determined, as required by 49 U.S.C. 31315(a) and the implementing regulations under 49 CFR Part 381, that the waiver is in the public interest and that the waiver is likely to achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained in the absence of the waiver.

Public Interest

FMCSA believes the granting of the waiver is in the public interest, given the scope of Old Dominion's and other companies' operations and their role in delivering cargo that ultimately benefit consumers. In the case of Old Dominion, the company has 228 service centers located throughout the Nation and operates a fleet of more than 8,500 power units. The company employs more than 10,000 company drivers. It is in the public interest to avoid disruptions to Old Dominion and other carriers' operations and, subsequently, a disruption to the movement of a significant amount of freight.

Safety Equivalency

FMCSA has determined that the electronic system that Old Dominion will use to monitor its drivers' hours of service during the period of the waiver will achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained in the absence of the waiver. The company will not only electronically capture the duty status information for all its drivers, it will also monitor the real-time status of its drivers'

compliance with the hours-of-service regulations so that supervisors and dispatchers may intervene immediately if a driver is about to run out of driving or on-duty time.

Also, with the AOB RD settings outlined in the waiver request, which exceed the minimum required by 49 CFR 395.15, and the commitment by PeopleNet to make associated software changes in its ELD software to disable the “skip feature,” limit the auto-duty driving status change threshold to 5 miles or less, limit the geofencing of yard moves to a 0.5-mile radius or less, and maintaining the Auto-Duty Status Change functions outlined in its petition, we believe the requisite level of safety will be provided during the waiver period. In addition, Old Dominion will continue to compel its short haul drivers that are not required to maintain records of duty status to use the existing AOB RD platform

Unique Circumstances

Consistent with the statutory requirements for waivers, this relief is for a period not in excess of 3 months and is limited in scope and circumstances. FMCSA finds that the challenges Old Dominion described in achieving compliance with the ELD requirements while integrating the PeopleNet ELD software into existing fleet management systems is a unique situation for Old Dominion and other carriers facing similar challenges integrating PeopleNet software into their fleet management systems.

For the reasons cited above, FMCSA grants Old Dominion, and other motor carriers facing similar challenges integrating PeopleNet ELD software into fleet management systems, a limited three-month waiver from the ELD requirements, subject to the terms and conditions provided below.

Terms and Conditions of the Waiver

This waiver covers Old Dominion Inc. and other motor carriers experiencing similar challenges resulting from PeopleNet's software for the period beginning at 12:01 a.m. (ET) on December 18, 2017, continuing through 11:59 p.m. on March 18, 2018.

Regulatory Provisions Waived

This waiver is limited strictly to 49 CFR 395.8(a)(1)(i) and Subpart B of 49 CFR Part 395, Electronic Logging Devices. Old Dominion and other motor carriers with similar situations related to PeopleNet's recent software release, must comply with all other applicable provisions of the Federal Motor Carrier Safety Regulations (FMCSRs) (49 CFR 350-399).

Restrictions

Each motor carrier operating under this waiver must ensure that drivers required to maintain a record of duty status (ROD) must do so with a device that meets the requirements of 49 CFR 395.15 concerning automatic on-board recording devices (AOBRDs);

1. During the waiver period, vehicles may be added to the fleet only if the vehicle is equipped with ELD hardware, capable of running the PeopleNet ELD Software.
2. The AOBRD must transfer data directly into the motor carrier's fleet management and safety systems, allowing its dispatchers to know precisely where the drivers are at any given time and how many hours he/she has available under the Federal hours-of-service rules.
3. The motor carrier will use the AOBRD settings similar to those outlined in Old Dominion's waiver request.
4. PeopleNet system must be modified to disable or adjust the settings as outlined below.
 - a. Eliminate the "skip feature;"
 - b. Limit the auto-duty driving status change threshold to 5 miles or less; and

- c. Limit the geo-fencing yard time limit to a 0.5-mile radius or less.

If it is determined that this software has not been changed, this waiver does not apply.

Notification to FMCSA of Accidents

Each motor carrier must notify FMCSA within 5 business days of an accident (as defined in 49 CFR 390.5), involving any commercial motor vehicles operating under the terms of this waiver. The notification must include the following information:

- Date of the accident,
- City or town, and State, in which the accident occurred, or closest to the accident scene,
- Driver's name and license number,
- Vehicle number and State license number,
- Number of individuals suffering physical injury,
- Number of fatalities,
- The police-reported cause of the accident, and
- Whether the driver was cited for violation of any traffic laws, or motor carrier safety regulations.

Notification shall be by e-mail to MCPSD@DOT.GOV.

Preemption of State Requirements

Consistent with 49 U.S.C. 31315(d), this waiver preempts inconsistent State or local requirements applicable to interstate commerce.

Issued on: January 11, 2018

Cathy F. Gautreaux
Deputy Administrator

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